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Supreme Court, U.S.
FILED

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No. _____

In the
Supreme Court of the United States

In re:

CORNELIUS P. YOUNG and SUZANNE P. YOUNG,
Debtors,

CORNELIUS P. YOUNG and SUZANNE P. YOUNG,
Debtors/Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

VICTOR DAHAR,
Trustee.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GRENVILLE CLARK III
Counsel of Record
GRAY, WENDELL & CLARK, P.C.
650 ELM STREET
MANCHESTER, NH 03101
(603) 625-4100

Counsel for Petitioners

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

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QUESTIONS PRESENTED

1. Whether the Youngs' 1992 income tax obligation was discharged by the entry of a discharge in their 19[illegible]apter 7 bankruptcy case where the three-year period set forth at §507(a)(8)(A)(i) of the Bankruptcy Code had elapsed between the due date of their tax return and the filing of their chapter 7 bankruptcy case.

2. Whether the three-year period set forth at Bankruptcy Code §507(a)(8)(A)(i) was tolled or extended by the length of time that the Youngs were debtors in a prior chapter 13 bankruptcy, notwithstanding the absence of any language in §507(a)(8)(A)(i) or elsewhere that would allow such tolling.

PARTIES TO THE PROCEEDING

Petitioners/Debtors

Cornelius P. Young and Suzanne P. Young, individuals with no corporate affiliations.

Respondent

The United States of America.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTES INVOLVED 1

STATEMENT OF THE CASE 4

ARGUMENT FOR GRANTING THE PETITION 5

I. THERE IS A PROFOUND SPLIT AMONG THE DECISIONS OF THE COURTS OF APPEAL THAT HAVE RULED ON THIS MATTER. 5

II. THE QUESTION PRESENTED IS IMPORTANT 8

CONCLUSION 9

APPENDIX

Appendix A
Court of Appeals Opinion, 12/1/00 . . . . . 1a

Appendix B
Court of Appeals Errata 11a

Appendix C
District Court Order, 3/20/00 . . . . . 12a

Appendix D
U.S. Bankruptcy Court Memorandum
Opinion, 5/5/99 . . . . . 14a

TABLE OF AUTHORITIES

Cases **Page(s)**

In re Taylor,
81 F.3d 20 (3rd Cir. 1996) 7

Montoya v. United States (In re Montoya),
965 F.2d 554 (7th Cir. 1992) 7

Morgan v. United States,
182 F.3d 775 (11th Cir. 1999) 6

Palmer v. United States (In re Palmer),
219 F.3d 580 (6th Cir. 2000) 6

Quenzer v. United States (In re Quenzer),
19 F.3d 163 (5th Cir. 1993) 6

United States v. Ron Pair Enterprises, Inc.,
489 U.S. 235, 109 S.Ct. 1026,
103 L.Ed.2d 290 (1989) 8-9

Waugh v. Internal Revenue Service,
109 F.3d 489 (8th Cir. 1997),
cert. denied, 522 U.S. 823 (1997) 6-7

West v. United States (In re West),
5 F.3d 423 (9th Cir. 1993),
cert. denied, 511 U.S. 1081 (1994) 6

Young v. United States (In re Young),
233 F.3d 56 (1st Cir. 2000) 1

Young v. United States (In re Young),
1999 Bankr. Lexis 557;
99-1 U.S. Tax Cas. (CCH) ¶50,553;
83 A.F.T.R.2d (RIA) 2876 1

Constitutional Provisions, Statutes and Rules

11 U.S.C. §101 *et seq.* 1
26 U.S.C. §6501 4
28 U.S.C. §157 5
28 U.S.C. §1254(1) 1
28 U.S.C. §1334 5
Bankruptcy Code §105(a) 7
Bankruptcy Code §349(b)(3) 5
Bankruptcy Code §507(a)(2) 2
Bankruptcy Code §507(a)(8) 2, 3
Bankruptcy Code §507(a)(8)(A)(i) . . . . . i, 6, 7
Bankruptcy Code §507(a)(8)(A)(ii) 6, 7
Bankruptcy Code §523 . . . . . 1, 2
Bankruptcy Code §523(b) 7-8
Bankruptcy Code §727 1-2
Bankruptcy Code §1141 2
Bankruptcy Code §1228(a) 2
Bankruptcy Code §1228(b) 2
Bankruptcy Code §1307(b) 4
Bankruptcy Code §1322(a)(2) 4
Bankruptcy Code §1325 4
Bankruptcy Code §1328(b) 2
Internal Revenue Code §6501 4

OPINIONS BELOW

The opinion of the court of appeals is reported at *Young v. United States (In re Young)*, 233 F.3d 56 (1st Cir. 2000), and is reproduced in App. A at 1a - 10a. The Order of the United States District Court for the District of New Hampshire is not reported, but is reproduced in App. C at 12a - 13a. The opinion of the United States Bankruptcy Court for the District of New Hampshire is reported at *Young v. United States (In re Young)*, 1999 Bankr. Lexis 557; 99-1 U.S. Tax Cas. (CCH) ¶50,553; 83 A.F.T.R.2d (RIA) 2876, and is reproduced in App. D at 14a - 22a.

JURISDICTION

The opinion of the United States Court of Appeals for the First Circuit was issued on December 1, 2000, and was modified by an *Errata* issued December 20, 2000. This court has jurisdiction under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The statutes involved are all found in the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, hereinafter cited as Bankruptcy Code §__. The particular provisions of the Bankruptcy Code are as follows:

Bankruptcy Code §727 provides:

> (a) The court shall grant the debtor a discharge, ...
>
> (b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts

that arose before the date of the order for relief under this chapter, ...

Bankruptcy Code §523 provides:

(a) A discharge under §727, 1141, 1228(a), 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt —

(1) for a tax or a customs duty —

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required —

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any

manner to evade or defeat such tax; . . . .

Bankruptcy Code §507(a)(8) provides:

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for —

(A) a tax on or measured by income or gross receipts —

(i) for a taxable year ending on or before the date of filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition; [or]

(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition;. . . .

STATEMENT OF THE CASE

The petitioners, Mr. and Mrs. Young, filed their 1992 federal income tax return with the Internal Revenue Service (the "IRS") on October 15, 1993, after obtaining extensions from the usual April 15 filing date. The IRS assessed the tax in accordance with 26 U.S.C. §6501 (Internal Revenue Code §6501) on January 3, 1994. Since the Youngs had not paid their tax obligation, they made monthly installment payments to the IRS between April 1994 and November 1995, initially at $50 per month and later at $300 per month. The Youngs did not sign or file an offer in compromise with respect to this tax obligation.

The Youngs then filed a chapter 13 bankruptcy proceeding in the United States Bankruptcy Court for the District of New Hampshire on May 1, 1996. As required under chapter 13 (Bankruptcy Code §1322(a)(2)), they filed a chapter 13 plan which provided, among other things, for payment in full of their 1992 income tax obligation by making monthly plan payments through the chapter 13 trustee of $300 each for sixty months. The IRS filed a proof of claim with the bankruptcy court setting forth a so-called "priority" claim (which would have to be paid in full) for the Youngs' 1992 tax year of $12,736.17 and a non-priority claim of $4,933.87. Although the Youngs made several chapter 13 plan payments, their plan was not confirmed (Bankruptcy Code §1325).

On October 23, 1996, a bit less than six months after they filed their chapter 13 bankruptcy petition, the Youngs filed a request for dismissal of the chapter 13 proceeding in accordance with Bankruptcy Code §1307(b). Thereafter, after an administrative expense request of the chapter 13 trustee was granted, the Youngs' chapter 13 case was closed on March 13, 1997. Since their chapter 13 plan had never been

confirmed, the plan payments they had made to the trustee were returned to the Youngs. Bankruptcy Code §349(b)(3).

On March 12, 1997, the Youngs filed a chapter 7 bankruptcy petition in the New Hampshire bankruptcy court. They were granted a chapter 7 discharge on June 17, 1997, after which, on September 22, 1997, their chapter 7 case was closed. It was then reopened on July 13, 1998, at the Youngs' request, to allow them to file a complaint with the bankruptcy court to determine whether their 1992 income tax obligation had been discharged. Ruling on cross motions for summary judgment, the bankruptcy court held that the Youngs' 1992 income tax obligation was not discharged by their 1997 chapter 7 bankruptcy discharge. The Youngs appealed the bankruptcy court's decision to the United States District Court for the District of New Hampshire, which affirmed the bankruptcy court's ruling. The Youngs then appealed to the United States Court of Appeals for the First Circuit, which affirmed the judgment of the district court. This petition for review of the judgment of the court of appeals followed.

The basis for federal jurisdiction in the United States Bankruptcy Court for the District of New Hampshire is 28 U.S.C. §1334, the Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire dated January 18, 1994, (DiClerico, C.J.) and 28 U.S.C. §157.

ARGUMENT FOR GRANTING THE PETITION

I. There is a profound split among the decisions of the courts of appeal that have ruled on this matter.

Under a plain reading of the provisions of the Bankruptcy Code, the Youngs' 1992 tax obligation should have been discharged with the issuance of their 1997 bankruptcy discharge, since the three-year period under §507(a)(8)(A)(i) had elapsed between the filing of their tax return on October 15, 1993, and the filing of their chapter 7 bankruptcy petition on March 12, 1997. Had the Youngs resided in Texas, rather than New Hampshire, when they filed their chapter 7 petition, their tax obligation almost certainly would have been discharged under the Fifth Circuit's ruling in *Quenzer v. United States (In re Quenzer)*, 19 F.3d 163 (5th Cir. 1993). Similarly, if they had lived in Ohio, the Youngs would have prevailed, absent a finding of misconduct or manipulation of the bankruptcy system on their part, under the Sixth Circuit's holding in *Palmer v. United States (In re Palmer)*, 219 F.3d 580 (6th Cir. 2000). Again, had the Youngs resided in Georgia, their tax obligation would have been discharged, subject to the bankruptcy court's review of "the equities," under the Eleventh Circuit's ruling in *Morgan v. United States*, 182 F.3d 775 (11th Cir. 1999).

Five other circuits, however, through what is at times cacophonous reasoning, have arrived at the opposite result and denied discharges to debtors in similar circumstances. For example, the Ninth Circuit held, in *West v. United States (In re West)* 5 F.3d 423 (9th Cir. 1993), *cert. denied*, 511 U.S. 1081 (1994), that the 240-day period set forth at Bankruptcy Code §507(a)(8)(A)(ii) would be tolled or extended for the period of the debtors' prior bankruptcy proceeding plus six months, notwithstanding the absence of any language in §507(a)(8)(A)(ii) that permitted such tolling or extension. The court held that this was the "rare case" where the plain meaning of the statute should give way to the intent of Congress as discerned by the court. Likewise, the Eighth Circuit, in *Waugh v. Internal Revenue Service*, 109

F.3d 489 (8th Cir. 1997), *cert. denied*, 522 U.S. 823 (1997), invoked the "rare case" exception to the plain meaning rule and held that the court's perception of congressional intent should control. Similarly, the Third Circuit ruled in *In re Taylor*, 81 F.3d 20 (3rd Cir. 1996), that following the plain meaning of the statute would result in "absurd results" and "taxpayer[s] abuse." In the Tenth Circuit, the court of appeals ruled that the 240-day period in Bankruptcy Code §507(a)(8)(A)(ii) was tolled through application of Bankruptcy Code §105(a), which allows a bankruptcy judge to issue any order ". . . that is necessary or appropriate to carry out the provisions of this title." Finally, the Seventh Circuit weighed in on the issue in *Montoya v. United States (In re Montoya)*, 965 F.2d 554 (7th Cir. 1992). In that case, the Montoyas did not contest the tolling or extension of the three-year period in Bankruptcy Code §507(a)(8)(A)(i). Instead, they argued that the IRS could not add to the tolling calculation the period of time the IRS' claims had been disallowed in their prior bankruptcy proceedings. On this issue, the Montoyas lost, the court holding that the IRS was entitled to a full three years and six months, unfettered by the automatic bankruptcy stay and the temporary disallowance of its claims in the bankruptcy court, to collect its assessment.

It is to this parade that the First Circuit attaches itself, declaring that ". . . Congress appears never to have thought about the precise problem posed by the Youngs' successive petitions[.]", App. A at 7a. Yet Congress, in enacting the Bankruptcy Code, does seem to have thought about the problem of different dischargeability results resulting from the filing of successive petitions, since Bankruptcy Code §523(b) provides:

> Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under

> subsection (a)(1), (a)(3), or (a)(8) of this section . . . . in a prior case concerning the debtor under this title, ... is dischargeable in a case under this title, unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

The decisions among the circuit courts of appeal have resulted in different dischargeability outcomes for debtor-taxpayers situated in identical circumstances. This court needs to rule on the issue to resolve the conflict among decisions of the circuits.

II. The Question Presented Is Important

Since 1990, the number of bankruptcy cases filed in the United States has exceeded 750,000 annually, and since 1996, the number has increased to well over 1,000,000 per year. Bankruptcy cases are by far the largest category of legal proceedings handled by the federal courts.

While no statistics appear to be available, it is plain that not all bankruptcy filings present questions about the dischargeability of income taxes. Of those that do, only a small percentage involve the issue raised in this case, where serial bankruptcy filings are involved. Nevertheless, on an absolute basis, the number of times the question arises is significant, as evidenced by the number of reported cases at the bankruptcy court, district court and bankruptcy appellate panel levels.

This case also presents an important jurisprudential question as to how federal courts should apply the plain meaning of federal statutes in accordance with the holdings in cases such as *United States v. Ron Pair Enterprises, Inc.*, 489

U.S. 235, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989), particularly where the statutory provisions at issue are as detailed and carefully drawn as those found in the Bankruptcy Code and the Internal Revenue Code.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/_____
Grenville Clark III
Counsel of Record
GRAY WENDELL & CLARK P.C.
650 Elm Street
Manchester, NH 03101
(603) 625-4100

Counsel for Petitioners
Cornelius Paul Young and
Suzanne P. Young

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

[Filed December 1, 2000]

No. 00-1484

IN RE: CORNELIUS P. YOUNG)
and SUZANNE P. YOUNG,)
Debtors)
CORNELIUS P. YOUNG)
and SUZANNE P. YOUNG,)
Debtors-Appellants,)
)
v.)
)
UNITED STATES OF AMERICA,)
Appellee.)
)
VICTOR DAHAR, Trustee.)
)

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

December 1, 2000, Decided

Hon. Steven J. McAuliffe, U.S. District Judge

Before Torruella, Chief Judge, Bownes, Senior Circuit Judge, and Boudin, Circuit Judge.

OPINION

BOUDIN, Circuit Judge. Having obtained a filing extension, Cornelius and Suzanne Young filed their 1992 federal income tax return on October 15, 1993. Their return showed taxes due after withholding, but no payment accompanied the return. Instead, the Youngs made modest payments to the IRS for a number of months and then, on May 1, 1996, filed for Chapter 13 bankruptcy, 11 U.S.C. § 1321 (1994). This automatically stayed all IRS efforts to collect taxes from the Youngs. Id. § 362(a)(6).

To complete a Chapter 13 bankruptcy--typically a proceeding that lasts several years--requires that tax claims be paid in full. 11 U.S.C. § § 507(a)(8), 1322(a)(2). At the outset, the IRS filed a proof of claim for the unpaid 1992 taxes. However, the Youngs did not stay the course; instead, on October 23, 1996, the Youngs moved to dismiss their petition. Id. § 1307. The bankruptcy court did so on March 13, 1997, which would normally terminate the automatic stay.[1] Id. § 362(c)(2).

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[1] The Youngs argue that the automatic stay was lifted upon their motion to dismiss rather than when the bankruptcy court closed the case. Because the choice of dates does not affect our analysis or outcome, we assume for simplicity's sake that the closing date controls.

One day before the Chapter 13 proceeding was closed, the Youngs filed a new "no asset" bankruptcy petition under Chapter 7. This in turn continued the automatic stay pendente lite. Chapter 7 is usually a brief proceeding to distribute non-exempt assets to creditors. On June 17, 1997, the Youngs received a discharge in the Chapter 7 proceeding, generally discharging their debts "[e]xcept as provided in section 523 [of title 11]," 11 U.S.C. § 727(b).

After the discharge the IRS sought the unpaid balance for the Youngs' 1992 taxes, and the Youngs then asked the bankruptcy court to rule that their remaining 1992 tax liability had been discharged. The IRS countered that section 523(a)(1)(A) of the Bankruptcy Code precludes the discharge of any debt "for a tax . . . of the kind and for the periods specified in section . . . 507(a)(8)," 11 U.S.C. § 523(a)(1), which includes in pertinent part unsecured government claims for income tax

> for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the [bankruptcy] petition . . . .

11 U.S.C. § 507(a)(8)(A)(i).

This convoluted language is commonly understood to describe claims for taxes for which the return was due three years or less before the petition was filed. The Youngs' 1992 return was due on October 15, 1993; more than three years before their Chapter 7 petition was filed on March 12, 1997. In response to this computational argument for discharge, the

IRS said that in calculating the three-year period under section 507, the court should exclude the period during which the Chapter 13 automatic stay had prevented the IRS from collecting the Youngs' tax debt; if this is done, the elapsed delay is well under three years.

Following the majority view among the divided authorities, the bankruptcy court agreed with the IRS that the three-year period in section 507 should be tolled during the period of the prior automatic stay. The district court affirmed, saying that the better reasoned decisions supported this result. The Youngs now appeal to this court. The issues, which turn solely on the law, are considered de novo in this court. Martin v. Bajgar (In re Bajgar), 104 F.3d 495, 497 (1st Cir. 1997).

Prior to 1966, no tax debt was discharged by bankruptcy. 11 U.S.C. § § 35(a)(1), 104(a)(4) (1964). The ability of the IRS to recover unpaid taxes was constrained only by the statute of limitations requiring (exceptions aside) assessment within three years of the return's filing, and collection within six years (now ten years) of assessment. 26 U.S.C. § § 6501-02 (1964 & 1994). In 1966, Congress amended the Bankruptcy Code to strike a new balance between government revenue needs and the "fresh start" objectives of the bankruptcy laws. Pub. L. No. 89-496, § 2, 80 Stat. 270 (1966) (codified at 11 U.S.C. § 35 (Supp. V 1970)); S. Rep. No. 1158 (1966), reprinted in 1966 U.S.C.C.A.N. 2468, 2469-72. Taxes were made dischargeable under Chapter 7 but subject to a three-year "lookback" provision which, ignoring exceptions not relevant here, read as follows:

> A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . . except ... taxes which became legally due and owing by the bankrupt . . . within three years preceding bankruptcy . . . .

11 U.S.C. § 35(a) (Supp. V 1970).

This provision did not affect claims of the government that were secured by liens that the IRS obtained prior to bankruptcy through IRS levies or court proceedings to collect past taxes. S. Rep. No. 1158, reprinted in 1966 U.S.C.C.A.N. at 2470. The new three-year lookback limitation, said Congress, would "induce taxing authorities to act to prevent large accumulations of tax claims," curbing the past practice of allowing them "to accumulate and remain unpaid for long periods of time." Id. at 2471. Thus, even under the new scheme, the government could effectively protect itself as to all tax claims by acting promptly.[2]

In the Bankruptcy Reform Act of 1978, Pub. L. 95-598, 92 Stat. 2549 (codified at 11 U.S.C. § § 101-1330 (1994)), Congress revised the 1966 amendments in various ways. Notably, it split the relevant discharge provision into the two sections described above (sections 727(b) and 523(a)(1)(A)); it fine-tuned the three-year period to begin with

---

[2] If the IRS assessed and obtained liens within three years of a tax due date, taxes due more than three years prior to a bankruptcy petition would be secured through liens; and although a bankruptcy petition would automatically stay assessment and collection of any new taxes, the three-year lookback provision would prevent discharge as to them.

the date of the return instead of the due date of the taxes, 11 U.S.C. § 507(a)(8)(A)(i); and it added a new exception to dischargeability for taxes assessed within 240 days before the filing of a bankruptcy petition, 11 U.S.C. § 507(a)(8)(A)(ii). But details aside, there is no indication that Congress intended to alter the three-year lookback compromise struck in 1966.

Against this background, the issue on this appeal is readily framed. The Youngs rely on the language of the present Bankruptcy Code and say correctly that a plain language reading favors their position. The IRS claim for their unpaid 1992 taxes was never secured and so is dischargeable in bankruptcy unless excepted by the three-year lookback provision. And, literally read, the three-year lookback provision does not apply to the Youngs because the tax return in question was filed more than three years prior to the Youngs' Chapter 7 bankruptcy petition.

The IRS, by contrast, urges that the three-year lookback period be tolled--that is to say, extended--by excluding the period during which the Youngs were in Chapter 13 proceedings. During this period, the IRS could not make collection efforts based on its prior assessment against the Youngs for their 1992 taxes; and given the overlap of the two automatic stays obtained by the Youngs, the IRS never got the three-year period that Congress intended to provide it to assess and collect the 1992 taxes. This, says the IRS, frustrates the original compromise embodied in the statute and opens the way to taxpayer manipulation.

Congress has adopted tolling provisions to deal with related problems elsewhere in the Bankruptcy and Tax

Codes;[3] indeed, there is a tolling provision of a specialized kind built into the companion 240-day assessment period added to section 507(a)(8)(A)(ii) in 1978. But the inferences from the presence of these express provisions more or less cancel out: the IRS gets some support from underlying policies in favor of tolling adopted in these different situations, while the Youngs can say that Congress's express provisions show that it knew how to add tolling provisions when it wished to do so, see Keene Corp. v. United States, 508 U.S. 200, 208 (1993) (using the canon of inclusio unius).

The truth is that Congress appears never to have thought about the precise problem posed by the Youngs' successive petitions. Had it done so, it is a very safe guess that it would have adopted a tolling provision of some sort to protect the IRS. The IRS's policy arguments, based on the original 1966 compromise and the threat of manipulation, are strong ones, and the Youngs have no serious counter-arguments based on policy; they rely mainly on literal language and the impropriety of courts rewriting statutes. This last point is the nub of the matter.

If Congress imposed a new tax on two classes of taxpayers and patently omitted a third comparable class only through oversight, a court could not properly read the third class into the tax statute, however confident judges might be

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[3] 11 U.S.C. § 108(c) (extending nonbankruptcy statutes of limitation for creditors when they are barred by the Bankruptcy Code from taking action against a debtor); 26 U.S.C. § 6503(h) (extending the statutes of limitation for the IRS's assessment and collection of taxes while it is stayed by the Bankruptcy Code from pursuing a debtor).

about what Congress would have done if it had thought of the defect. Yet courts have been far more ready to interpolate solutions into statutes where the concern is with ancillary matters such as remedies, exhaustion requirements, time period calculations, retroactivity, and estoppel. Such matters are usually subordinate to Congress's main concerns, and courts often have prior expertise or existing doctrine in point.

The category most apt in this case is that of statutes of limitations. Ordinarily, such limitations periods are fixed tersely by statute, but an apparatus of judge-made tolling doctrine has been superimposed on such statutes. Developments in the Law--Statutes of Limitations, 63 Harv. L. Rev. 1177, 1220-35 (1950). The three-year lookback provision is akin to a statute of limitations--it preserves recent claims against discharge and cuts off older ones--and we think that courts retain the same freedom here to assure that the underlying aims of Congress are not frustrated by conduct that thwarts the compromise enacted in 1966.

Virtually all of the circuit cases dealing with successive bankruptcy petitions and the three-year lookback provision have chosen to supplement the statute; the only difference between the judges is how to do it. The most common rule, adopted by five circuits, is that the lookback period is automatically tolled during a prior bankruptcy.[4]

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[4] Waugh v. IRS (In re Waugh), 109 F.3d 489, 491-93 (8th Cir.), cert. denied, 522 U.S. 823 (1997); In re Taylor, 81 F.3d 20, 22-24 (3d Cir. 1996); West v. United States (In re West), 5 F.3d 423, 426-27 (9th Cir. 1993), cert. denied, 511 U.S. 1081 (1994); United States v. Richards (In re Richards), 994 F.2d 763, 765-66 (10th Cir. 1993); Montoya v. United States (In re

These courts differ only in using different analogies or arguments to support the rule; four borrow from some combination of tolling provisions elsewhere in the Bankruptcy and Tax Codes, see note 3 above, while the Tenth Circuit relies on the general equitable powers of bankruptcy courts under 26 U.S.C. § 105(a).

By contrast, three other circuits have held that the lookback period is not automatically tolled by a prior bankruptcy proceeding but that equitable considerations may permit tolling on a case-by-case basis. The Eleventh Circuit states that the equities will usually favor the government, Morgan v. United States (In re Morgan), 182 F.3d 775, 779-80 (11th Cir. 1999); the Sixth seems to require a showing of debtor misconduct, Palmer v. United States (In re Palmer), 219 F.3d 580, 585 (6th Cir. 2000); and the Fifth agnostically demands a "[f]ull development and examination of the facts," Quenzer v. United States (In re Quenzer), 19 F.3d 163, 165 (5th Cir. 1993).

We follow the majority view in favor of automatic tolling. In some cases, the equities alone might justify tolling, but the automatic tolling rule rests on a broader basis: it preserves for the government the benefit of the 1966 compromise by giving it the full three years to assess and collect taxes. The taxpayer is faced with "old" tax claims only if he or she has chosen to make back-to-back bankruptcy filings. And, as a final, although less important benefit, automatic tolling is infinitely easier and more predictable to administer.

Montoya), 965 F.2d 554, 557-58 (7th Cir. 1992).

Some might think that to make up for omissions in statutes will only encourage careless drafting and that serious gaps can always be filled by congressional amendment. Others might argue that in an age of numerous and complex enactments, lawmakers should expect that common law judges will use their traditional skills to support legislation. As usual, it is a matter of striking the right balance, and it comforts us to know that all circuits that have ruled on the matter agree that some judge-made tolling adjustment is required for section 507(a)(8)(A)(i).

The judgment of the district court is affirmed. Each side will bear its own costs on this appeal.

It is so ordered.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 00-1484

IN RE: CORNELIUS P. YOUNG)
and SUZANNE P. YOUNG,)
Debtors.)
)
CORNELIUS P. YOUNG)
and SUZANNE P. YOUNG,)
Debtors, Appellants,)
)
v.)
)
UNITED STATES OF AMERICA,)
Appellee.)
)
VICTOR DAHAR,)
Trustee.)

ERRATA

The opinion of this court issued on December 1, 2000, is amended as follows:

One page 8, second full paragraph, line 6, replace the word "omissions" with the word "solutions".

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

[Filed March 20, 2000]

Civil No. 99-325-M

Cornelius P. Young; and Suzanne P. Young, *Appellants*	)
v.	)
United States of America, *Appellee*	)

ORDER

The issue presented in this appeal from the bankruptcy court is straight-forward: whether federal income tax assessments due more than three years before appellants' successive bankruptcy filing should be discharged. The bankruptcy court (Vaughn, C.J.) determined that the tax debt was not dischargeable because the three year period allowed the Internal Revenue Service to collect taxes under 11 U.S.C. §§ 523 (a) (1) (A) and 507 (a) (8) (A) (i) was tolled during the pendency of appellants' earlier Chapter 13 proceeding, during

which the IRS was statutorily precluded from taking collection action. See 11 U.S.C. § 362 (a); 26 U.S.C. § 6503 (h).

While there is a minor split of authority, the decided majority, and better reasoned, approach is that articulated by Chief Judge Vaughn. There is no reason to add to the decision appealed from beyond saying it is affirmed for the reasons given. See In re Avila, 228 B.R. 63, 66 n.3 (Bankr.D.Mass. 1999) (collecting cases).

Conclusion

The decision of the bankruptcy court granting summary judgment to the appellee is affirmed.

SO ORDERED.

/s/
Steven J. McAuliffe
United States District Judge

March 20, 2000

cc: Grenville Clark, III, Esq.
Joseph L. Meadows, Esq.
Victor Dahar, Esq.
George Vannah

APPENDIX D

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW HAMPSHIRE

[Filed May 5, 1999]

Bk. No. 97-10848-MWV,
Chapter 7, Adv. No. 98-1096-MWV

IN RE: CORNELIUS P. YOUNG)
and SUZANNE P. YOUNG,)
Debtors)
CORNELIUS P. YOUNG)
and SUZANNE P. YOUNG,)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA,)
INTERNAL REVENUE SERVICE)
Defendant.)

MEMORANDUM OPINION

The Court has before it the United States of America, Internal Revenue Service's ("Defendant") motion for summary judgment requesting that the Court order that the tax debt owed the Defendant by Cornelius P. and Suzanne P. Young ("Plaintiffs") is not excepted from discharge. The

Defendant's motion alleges that the three-year nondischargeability period for income taxes was tolled during the Plaintiffs' prior bankruptcy. The Plaintiffs object, alleging that the plain meaning of section 507(a)(8)(A)(1) of the Bankruptcy Code is clear and does not lead to absurd results when taken in conjunction with section 523(a)(1); thus, the Plaintiffs allege that their prior bankruptcy filing did not toll the statutory period. For the reasons stated below, the Defendant's motion for summary judgment is granted.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. § § 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

FACTS

On October 15, 1993, the Plaintiffs herein filed their 1992 federal income tax returns, which the the Internal Revenue Service assessed on January 3, 1994. The Plaintiffs did not sign an offer in compromise, but paid the Internal Revenue Service monthly installment payments from April 1994 to November 1995. The Plaintiffs filed for Chapter 13 bankruptcy on May 1, 1996.[1] During their Chapter 13 case, the Plaintiffs filed a reorganization plan, which provided for payment of the remainder of the amount owed the Defendant. The Internal Revenue Service filed a proof of claim, which it amended on September 20, 1996. The amended proof of

[1] The case number is 96-1180-MWV.

claim set forth a priority claim of $12,736.17 and a non-priority claim of $4,933.87. The Plaintiffs' plan was not confirmed. Thereafter, the Plaintiffs filed a voluntary notice of dismissal and their Chapter 13 case was dismissed on March 13, 1997.[2]

The Plaintiffs filed for Chapter 7 bankruptcy on March 12, 1997, and were granted a discharge on June 17, 1997. On September 22, 1997, their case was closed. However, on July 13, 1998, the Plaintiffs herein reopened their Chapter 7 case to file a complaint to determine the dischargeability of the 1992 income tax obligation. In their complaint, the Plaintiffs seek a declaration that their 1992 assessed federal income tax liability, which they reported on October 15, 1993, should be excepted from discharge pursuant to section 507(a)(8)(A) of the Bankruptcy Code because it became due more than three years before they filed for Chapter 13. The Defendant disagrees and asserts that its right to collect taxes was tolled during the Plaintiffs' Chapter 13 filing, and that the Plaintiffs should not be able to discharge this debt by filing Chapter 7 before the IRS could commence collection.

DISCUSSION

Under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, a summary judgment

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[2] In case number 96-11180-MWV, the Debtors' notice of voluntary dismissal was filed October 23, 1996, the Trustee filed his report on February 2, 1997, and the case was closed on March 13, 1997.

motion should be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "Genuine," in the context of Rule 56(c), "means that the evidence is such that a reasonable jury could resolve the point in favor of the nonmoving party." Rodriguez-Pinto v. Tirado-Delgado, 982 F.2d 34, 38 (1st Cir. 1993) (quoting United States v. One Parcel of Real Property, 960 F.2d 200, 204 (1st Cir. 1992)). "Material," in the context of Rule 56(c), means that the fact has "the potential to affect the outcome of the suit under applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Courts faced with a motion for summary judgment should read the record "in the light most flattering to the nonmovant and indulg[e] all reasonable inferences in that party's favor." Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994).

The issue in dispute revolves around the construction of various Bankruptcy Code statutes. There are no material facts in dispute. Section 523(a)(1)(A) of the Bankruptcy Code states that taxes are not discharged if they are "of the kind and for the periods specified in section . . . 507(a)(8)(A) of this title, whether or not a claim for such tax was filed or allowed." 11 U.S.C.A. § 523(a)(1)(A) (1988 & Supp. 1998). Thus, section 507(a)(8)(A) determines whether section 523(a)(1)(A) is to have effect.

Section 507(a)(8)(A) states, in pertinent part:

(a) The following expenses and claims have priority in the following order:

> (8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for--
>
> (A) a tax on or measured by income or gross receipts--
>
> (i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition . . . .

11 U.S.C.A. § 507(a)(8)(A) (1988).

Statutes are to be followed to the literal letter, unless doing so would yield absurd results not intended by their drafters. See United States v. Ron Pair Enters., Inc., 489 U.S. 235 (1989) (the plain meaning of a statute controls); United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1949) (citing United States v. American Trucking Ass'n, 310 U.S. 534, 543 (1940) ("[A]ll laws are to be given a sensible construction and that a literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.") (other citations omitted).

The Defendant does not dispute, were no tolling to apply, that the taxes at issue became due more than three years prior to the filing of the Plaintiffs' second bankruptcy petition, and would thus be discharged. However, the

Defendant does assert that if this Court looks only to section 507(a)(8)(A), which does not provide for tolling, discharging its debt would frustrate Congressional intent to give taxes priority under the Bankruptcy Code. (See Def.'s Mem. at 3-5.)

The Court agrees and holds that the Defendant's right to collect taxes was tolled during the pendency of the Plaintiffs' first Chapter 13 case. In doing so, this Court follows the well reasoned decisions in this circuit, as well as others, that the Internal Revenue Code's tolling provision tolls the Bankruptcy Code's three-year priority period under section 507(a)(8)(A). See 11 U.S.C.A. § 108(c) (1988 & Supp. 1998) (a creditor may commence an action against the debtor thirty days subsequent to either the end of the automatic stay or the statutory limitations period); 26 U.S.C.A. § 6503 (1982 & Supp. 1998) (Section 6503(b) of the Internal Revenue Code suspends the collection of taxes for any period the taxpayer's assets "are in the control or custody of the court in any proceeding before any court of the United States . . . and for six months thereafter."); Waugh v. Internal Revenue Serv. (In re Waugh), 109 F.3d 489 (8th Cir. 1997); In re Taylor, 81 F.3d 20 (3rd Cir. 1996); West v. United States (In re West), 5 F.3d 423 (9th Cir. 1993); United States v. Richards (In re Richards), 994 F.2d 763 (10th Cir. 1993); Montoya v. United States (In re Montoya), 965 F.2d 554 (7th Cir. 1992); Palmer v. Internal Revenue Serv. (In re Palmer), 228 B.R. 880 (B.A.P. 6th Cir. 1999); Pagnac v. Minnesota Dep't of Revenue (In re Pagnac), 228 B.R. 219 (B.A.P. 8th Cir. 1998); Brickley v. United States (In re Brickley), 70 B.R. 113, 115 (B.A.P. 9th Cir. 1986) ("it is clear that Congress, by enacting Section 108(c), intended to activate Section 6503(b) and thereby suspend the running

of the statute of limitations for tax collection during a taxpayer's bankruptcy proceeding"); In re Pastula, 203 B.R. 941 (Bankr. E.D. Mich.) (holding that three-year priority period was not suspended), rev'd, 227 B.R. 794 (E.D. Mich. 1997); In re Eysenbach, 183 B.R. 365 (W.D.N.Y. 1995); In re Avila, 228 B.R. 63 (Bankr. D. Mass. 1999); Daniel v. United States (In re Daniel), 227 B.R. 675 (Bankr. N.D. Ind. 1998); Fontes v. United States (In re Fontes), 228 B.R. 3 (Bankr. N.D. Ala. 1998); Zecco v. United States (In re Zecco), 211 B.R. 109 (Bankr. D. Mass. 1997). Cf. Quenzer v. United States (In re Quenzer), 19 F.3d 163 (5th Cir. 1993) (tolling could not be used to toll priority period for collection of taxes).

The Court also finds that to discharge this debt by simply following the literal construction of sections 507(a)(8)(A) and 523(a)(1)(A) would be an absurd consequence unintended by Congress and would allow debtors to manipulate the bankruptcy system. See Brickley, 70 B.R. at 115 ("The Debtors' argument that the Internal Revenue Service failed to collect its taxes within the three-year period of nondischargeability ignores the fact that their property was unreachable during most of that time."). Although the Court imputes no bad faith on the Plaintiffs, it is worth noting that the Defendant's claim was to be paid in full under the Plaintiffs' Chapter 13 plan. Were the Court to allow this debt to be discharged, debtors could easily propose a plan to pay the Internal Revenue Service's claim in full under Chapter 13, dismiss their Chapter 13 case and file Chapter 7 to discharge the tax debt. Such an easy loophole cannot be allowed.

Congress enacted section 108 to "protect the right of governmental units (and other creditors) to collect debts

which are not discharged in the bankruptcy proceeding." S. REP. NO. 95-989 at 15 (1978), reprinted in 1978 U.S.C.C.A.N. 5787. Further, section 108 contemplates Internal Revenue Code section 6503(b). See § 108; S. REP. NO. 95-989 at 30-31 (1978), reprinted in 1978 U.S.C.C.A.N. 5787. In granting the Defendant's motion for summary judgment, this Court follows the reasoning of Zecco v. United States, in which Judge Hillman wrote:

> Absence of tolling would permit a scenario where a tax debtor could file a petition under Title 11 and allow the automatic stay to consume much or all of the three year period, then dismiss or otherwise terminate the earlier case and file anew, more than three years after the original assessment, and obtain discharge from the tax liabilities. This would not be a desirable conclusion . . . . [T]he court, in expounding a statute, [will not] give to it a construction which would in any degree disarm the government of a power which would enable individuals to embarrass it, in the discharge of the high duties it owes to the community--unless plain and express words indicated that such was the intention of the Legislature. . . ."

Zecco, 211 B.R. at 109 (citing Brown v. Duchesne, 60 U.S. 183, 194-95 (1956)) (internal quotations omitted). Under the scenario of the present case, allowing this tax debt to be discharged would circumvent wholly the IRS's three-year time period in which to collect taxes. It is clear that Congress intended the IRS to be granted three years to collect taxes,

after which a tax debt could be discharged. § 507(a)(8)(A). Therefore, summary judgment is granted in favor of the Defendant.

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 5th day of May, 1999, at Manchester, New Hampshire.

/s/_____
Mark W. Vaughn
Chief Judge